THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.24562 of 2005

Date:20.12.2005

Yada Laxmi.

--------PETITIONER

The A.P.State Cooperative Bank and another.

---------RESPONDENTS

ORDER:

The husband of the petitioner was employed as an Attender in the 2nd respondent-Bank. He died on 27.01.2004, while in service. Thereupon, the petitioner filed an application with a prayer to provide her employment on compassionate grounds as well as to extend the monetary benefits, payable on account of the death of her husband. Complaining that no action has been taken thereon, the petitioner filed W.P.No.4902 of 2004. The Writ Petition was disposed of on 18.03.2004, directing the respondents to pass appropriate orders. It was in this context that the 2nd respondent passed an order, dated 26.04.2004, stating that the scheme of providing employment to the dependants of the deceased-employees on compassionate grounds was discontinued. So far as the payment of the amounts towards Gratuity etc. is concerned, it was pointed out that the husband of the petitioner had availed various loans, such as personal loan, housing loan; totalling to Rs.2,71,522/-, and that a sum of Rs.1,09,480/- payable towards gratuity, was adjusted. The petitioner challenges the action of the 2nd respondent in passing the impugned order.

The 2nd respondent filed a counter affidavit, admitting the factum of the death of the husband of the petitioner. It is stated that the scheme of providing

employment to the dependants of the deceased-employees was discontinued. The 2nd respondent pleaded that the husband of the petitioner had availed as many as six categories of benefits in the form of loans or advances, and had given a written undertaking while in service, authorizing the 2nd respondent to adjust the salary and other benefits towards the loan amount.

Sri Ch.Janardhan Reddy, the learned counsel for the petitioner submits that the scheme of providing employment to the dependants of the deceased-employees was in vogue, when the husband of the petitioner was in service, and even if it was discontinued with effect from 08.09.2003, the discontinuance would be applicable to the employees appointed thereafter. He further contends that gratuity, is a statutory benefit conferred upon an employee, in return to the service rendered by him, and the occasion to pay the same would arise only at a time when the employment comes to an end. He contends that the so-called undertaking given by the husband of the petitioner does not cover the gratuity and it would cover, at the best, the salary. The learned counsel further points out that when the gratuity is kept out of the purview of attachment, under Section 60 C.P.C. as well as the relevant provisions of the Payment of Gratuity Act, 1972 (for short 'the Act'), it was not at all open to the 2nd respondent, to adjust it towards any liability.

Sri T.Amarnath Goud, the learned Standing Counsel for the 2nd respondent submits that the scheme of providing employment to the dependants of the deceased-employees is not governed by any Statute, and being administrative and discretionary in nature, no individual can claim it, as matter of right, more so, when it was discontinued. He further contends that the undertaking furnished by the husband of the petitioner during his lifetime would enable the 2nd respondent to adjust all the amounts payable, after his death.

The relief claimed by the petitioner in this Writ Petition is two-fold. The first is as regards the compassionate appointment and the second is about the payment of death-cum-retirement benefits. As to the first aspect, it needs to be

seen that the scheme of providing employment to the dependants of the deceased-employees, who died while in service, was formulated with an object of rescuing the family, which is otherwise in distress. Slowly, it has assumed such a shape that the vacancies in various organizations are being filled up with the dependants of deceased or medically invalidated employees alone, and a semblance of succession had emerged. It was in this context that various organizations have given a re-thinking. While in some cases, the scheme was abolished as a whole, in other cases, the parameters were re-defined. It is not in dispute that no Statute, as such, requires an employer to formulate and implement the scheme for providing employment on compassionate grounds. When the 2nd respondent has taken a policy decision to discontinue the scheme, no exception can be taken to it. The fact that the 2nd respondent and other similarly situated Societies have undertaken drastic steps, to reduce the number of existing employees, to comply with the requirement under Section 116-C of the Cooperative Societies Act, 1964, and voluntary retirement schemes are implemented becomes relevant in this context. Therefore, the petitioner cannot be granted any relief of appointment on compassionate grounds.

The relevant Statutes as well as the bye-laws framed by the 2nd respondent-Bank provide for conferment of different kinds of benefits to an employee, on the eve of retirement or death. From the record, it does not appear that the post held by the husband of the petitioner was pensionable. However, the respondents did not dispute that the husband of the petitioner was entitled to be paid gratuity of Rs.1,09,480/-. There is no reference to other amounts, such as, provident fund. Having admitted the liability to pay gratuity, the 2nd respondent pleaded that the same is liable to be adjusted towards the amount drawn by the husband of the petitioner as personal loan, housing loan etc.

The Act casts a statutory duty upon the employer to pay gratuity, which is to be calculated as per the formula contained therein. The gratuity is payable, at a time when the employment of an individual comes to an end, through retirement, death or removal. Before such an event takes place, no employee

can claim the said amount. Equally same, an employee cannot have a right either to pledge or to permit adjustment of such amount before it had accrued to him. It is for this reason, that the Act as well as Section 60 C.P.C. were amended suitably, as to keep the entire amount of gratuity, out of the purview of attachment or other adjustments. When the Law has prohibits the attachment or other kinds of adjustments of gratuity, it is not at all open to the respondents to adjust the same towards the repayment of loan, extended to the husband of the petitioner. It may not be so, with regard to other amounts.

For the foregoing reasons, the Writ Petition is partly allowed, directing the respondents to pay a sum of Rs.1,09,480/- towards the gratuity, that had accrued to the service of the husband of the petitioner, within a period of four (4) weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

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20.12.2005

Note: L.R.Copy to be marked.

(B/o)

Jsu

***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

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+ WRIT PETITION NO.24562 OF 2005

% Dated 20.12.2005

Yada Laxmi, W/o.Late Y.Damodar,

Occ: Household, Savarkarnagar,

Ramagiri, Nalgonda District.

…….. PETITIONER

$ The A.P.State Co.op.Bank,

rep. By its Managing Director,
Hyderabad, and another.

..... RESPONDENTS

! Counsel for the appellant : Sri Ch.Janardhan Reddy

^ Counsel for the respondents : Sri A.H.Rama Krishna Rao for R1

Sri T.Amarnath Goud for R2

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< GIST:

> HEAD NOTE:

? Cases referred